

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TIMOTHY ALGAIER, DEBRA
EDDY,

Plaintiffs,

v.

BANK OF AMERICA, N.A., a
national bank doing business in
Washington state; and MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., aka MERS, a
corporation doing business in
Washington state,

Defendants.

NO: 13-CV-0380-TOR

PROTECTIVE ORDER

16 1. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential,
18 proprietary, or private information for which special protection may be warranted.
19 Accordingly, the parties hereby stipulate to and petition the court to enter the
20 following Stipulated Protective Order. The parties acknowledge that this

1 agreement is consistent with FRCP 26(c). It does not confer blanket protection on
2 all disclosures or responses to discovery, the protection it affords from public
3 disclosure and use extends only to the limited information or items that are entitled
4 to confidential treatment under the applicable legal principles, and it does not
5 presumptively entitle parties to file confidential information under seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” material shall include the following documents and tangible
8 things produced or otherwise exchanged which a party has a good faith belief are
9 confidential and deserving of protection, including, but not limited to, documents
10 and materials that contain information that is proprietary in nature; which contain
11 trade secret; agent or subcontractor or subcontractor information; or contain non-
12 party consumer specific information and documents, including private consumer
13 information that contains identifying, contact or private financial information
14 concerning a consumer.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 confidential material; (2) all copies, excerpts, summaries, or compilations of
19 confidential material; and (3) any testimony, conversations, or presentations by
20 parties or their counsel that might reveal confidential material. However, the

1 protections conferred by this agreement do not cover information that is in the
2 public domain or becomes part of the public domain through trial or otherwise.

3 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4 **4.1 Basic Principles.** A receiving party may use confidential material that
5 is disclosed or produced by another party or by a non-party in connection with this
6 case only for prosecuting, defending, or attempting to settle this litigation.

7 Confidential material may be disclosed only to the categories of persons and under
8 the conditions described in this agreement. Confidential material must be stored
9 and maintained by a receiving party at a location and in a secure manner that
10 ensures that access is limited to the persons authorized under this agreement.

11 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
12 otherwise ordered by the court or permitted in writing by the designating party, a
13 receiving party may disclose any confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as
15 employees of counsel to whom it is reasonably necessary to disclose the
16 information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation,
19 unless the parties agree that a particular document or material produced is for
20 Attorney’s Eyes Only and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for
2 this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication
6 of confidential material, provided that counsel for the party retaining the copy or
7 imaging service instructs the service not to disclose any confidential material to
8 third parties and to immediately return all originals and copies of any confidential
9 material;

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the “Acknowledgment and Agreement
12 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
13 ordered by the court. Pages of transcribed deposition testimony or exhibits to
14 depositions that reveal confidential material must be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this
16 agreement;

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or
20 discussing or referencing such material in court filings, the filing party shall confer

1 with the designating party to determine whether the designating party will remove
2 the confidential designation, whether the document can be redacted, or whether a
3 motion to seal or stipulation and proposed order is warranted. The parties will
4 comply with relevant Local Civil Rules regarding the procedures that must be
5 followed and the standards that will be applied when a party seeks permission from
6 the court to file material under seal.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each party or non-party that designates information or items for protection under
4 this agreement must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The designating party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify, so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or delay the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it
16 designated for protection do not qualify for protection, the designating party must
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
20 otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protection under this agreement must be clearly so designated before or when the
2 material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents
4 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
5 trial proceedings), the designating party must affix the word “CONFIDENTIAL”
6 to each page that contains confidential material. If only a portion or portions of the
7 material on a page qualifies for protection, the producing party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins).

10 (b) Testimony given in deposition or in other pretrial or trial proceedings:
11 the parties must identify on the record, during the deposition, hearing, or other
12 proceeding, all protected testimony, without prejudice to their right to so designate
13 other testimony after reviewing the transcript. Any party or non-party may, within
14 fifteen days after receiving a deposition transcript, designate portions of the
15 transcript, or exhibits thereto, as confidential.

16 (c) Other tangible items: the producing party must affix in a prominent
17 place on the exterior of the container or containers in which the information or
18 item is stored the word “CONFIDENTIAL.” If only a portion or portions of the
19 information or item warrant protection, the producing party, to the extent
20 practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the designating party's right to secure protection under this agreement for such
4 material. Upon timely correction of a designation, the receiving party must make
5 reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption
12 or delay of the litigation, a party does not waive its right to challenge a
13 confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any motion
17 regarding confidential designations or for a protective order must include a
18 certification, in the motion or in a declaration or affidavit, that the movant has
19 engaged in a good faith meet and confer conference with other affected parties in
20 an effort to resolve the dispute without court action. The certification must list the

1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality under the applicable Local Civil Rules. The burden of persuasion in
6 any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (e.g., to harass or impose unnecessary expenses and
8 burdens on other parties) may expose the challenging party to sanctions. All parties
9 shall continue to maintain the material in question as confidential until the court
10 rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a copy of
17 the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena
20 or order is subject to this agreement. Such notification shall include a copy of this
agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the designating party whose confidential material may be affected.

3 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
5 confidential material to any person or in any circumstance not authorized under
6 this agreement, the receiving party must immediately (a) notify in writing the
7 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
8 all unauthorized copies of the protected material, (c) inform the person or persons
9 to whom unauthorized disclosures were made of all the terms of this agreement,
10 and (d) request that such person or persons execute the “Acknowledgment and
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR
13 OTHERWISE PROTECTED MATERIAL**

14 When a producing party gives notice to receiving parties that certain
15 inadvertently produced material is subject to a claim of privilege or other
16 protection, the obligations of the receiving parties are those set forth in Federal
17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
18 whatever procedure may be established in an e-discovery order or agreement that
19 provides for production without prior privilege review. Parties shall confer on an
20 appropriate non-waiver order under Fed. R. Evid. 502.

1 10. NON-TERMINATION AND RETURN OF DOCUMENTS

2 Within 60 days after the termination of this action, including all appeals,
3 each receiving party must return all confidential material to the producing party,
4 including all copies, extracts and summaries thereof. Alternatively, the parties
5 may agree upon appropriate methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival
7 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
8 correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain
10 confidential material.

11 The confidentiality obligations imposed by this agreement shall remain in
12 effect until a designating party agrees otherwise in writing or a court orders
13 otherwise.

14 **DATED** June 18, 2015.



15 A handwritten signature in blue ink that reads "Thomas O. Rice".
16 THOMAS O. RICE
17 United States District Judge
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